with applications by liquidators connected with solicitors' bills of costs. In the last of them the judgment of the Court of Appeal was delivered by Lord Wrenbury, and surely there can be no greater authority on Company Law. He said (at p. 499):—

"The question is whether, upon the application of the official receiver as liquidator in a compulsory winding-up, the Court sitting in winding-up can order taxation of the solicitors' bill of costs against the company for a period before the commencement of the winding-up."

His Lordship answered that question in the affirmative.

In my view the appeal should be dismissed with costs and the respondent should have his costs in the Court below of which he was deprived, presumably on the ground that he had been guilty of an irregularity and would have had to come to the Court for amendment in any event.

To avoid any further costs being incurred I think the order made by Ong J. dated 3rd January, 1963, should be amended by the deletion of all portions relating to the description of the applicant.

Hill J.A.: I have had the advantage of reading the judgment of the learned Chief Justice, with which I agree and have nothing to add.

Barakbah J.A.: I have had the advantage of reading the judgment of the learned Chief Justice, with which I agree and have nothing to add.

Appeal dismissed.

Solicitors:—*Lim Cheng Ean & Co.; Shearn, Delamore & Co.*

SIMIRAH v. CHUA HOCK LEE & ANOR.

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) May 20, 1963]

[K.L. — F.M. Civil Appeal No. 7 of 1963]

Negligence—Driver of motor-car blinded by undipped lights of on-coming car—Motor-car kept in motion whilst driver so blinded—Duty of driver—Prima facie evidence of negligence.

Submission of no case—Duty of Judge to put Counsel to election whether to call evidence before ruling on it.

Evidence—Whether admission of driver binding on the owner.

Whilst driving a motor-car belonging to the first defendant, the second defendant knocked down a cyclist and fatally injured him at 5.45 a.m. There were no eye-witnesses to the accident. In a subsequent statement to the police the second defendant admitted knocking against a cyclist but gave as his excuse that he was temporarily blinded by undipped lights of an oncoming car. The learned trial judge held that the second defendant had no case to answer.

Held: (1) there was *prima facie* negligence on the part of the second defendant in that he failed to bring his vehicle to a halt when he was temporarily blinded;

(2) in cases of negligence if a court is asked to rule at the end of the plaintiff's case that the plaintiff has made out no case, it is most desirable that the court should put counsel for the defence to his election as to whether he wishes to call evidence for the defence and should refuse to give a ruling unless counsel elects to call no evidence;

(3) the admission of the second defendant was not admissible against the first defendant and the appeal against him would be dismissed.

Retrial ordered of second defendant.

Cases referred to:—

(1) *Laurie* v. *Raglan Building Co. Ltd.* [1942] 1 K.B. 152, 154.

(2) *Morris* v. *Luton Corporation* [1946] K.B. 114.

(3) *Parry* v. *Aluminium Corporation, Ltd.* 162 L.T.R. 236.

(4) *Yuill* v. *Yuill* [1945] P. 15.

(5) *Storey* v. *Storey* [1960] 3 All E.R. 279.

(6) *Burr* v. *Ware Rural District Council* [1939] 2 All E.R. 688.

COURT OF APPEAL.

T. S. Chiam for the appellant.

H. E. Cashin for the respondents.

Cur. Adv. Vult.

Thomson C.J.: This appellant is the widow and the administratrix of the Estate of one Johan bin Alias, deceased.

On 4th February, 1960, while cycling along the main road from Ayer Hitam to Kluang Johan bin Alias was knocked down by a motor-car driven by the second defendant and alleged to be the property of the first defendant and sustained personal injuries as a result of which, it is said, he died. In these circumstances the appellant sued for damages for the benefit of the estate of the deceased under section 8(1) of the Civil Law Ordinance and for loss of support for herself and the children of the deceased under section 7 of the Ordinance.

At the trial the evidence against the second defendant was that of two police officers and of a man Paiman bin Mohamed Sadir.

Inspector Ong Chong Watt said that on 4th February, 1960, he received information of an accident at 5¼ milestone Kluang/Ayer Hitam Road and proceeded to the scene where he drew a sketch plan of what he found.

Corporal Sarman bin Talib said that on the morning of 4th February he was on duty at Sri Lalang Police Station when he heard there was an accident at the 5th milestone Kluang/Ayer Hitam Road. He went to the scene and found a motor-car SC. 7044 and a bicycle which had clearly been in collision. He took photographs of what he found which were produced in evidence.

Later the same morning the witness Paiman and the second defendant came to the Police Station and made voluntary statements. That made by Paiman is not of any great importance but that of the second defendant contains a passage in the Malay language of which the following is a translation:—

"At about 10.00 p.m. on 3.2.60 I left Puyang by driving m/car No. SC. 7044 intending to go to Kluang. My speed was 35 m.p.h. Ah Leng who sat in front and on my left and Ah Chong, Ah Leow, Kuan Chin and Ah Choi who were seated in the rear were together with me (in the car).

At about 5.45 a.m. on 4.2.60 on reaching 5¼ milestone Jalan Ayer Hitam, Kluang, I saw a cyclist (riding) towards Kluang. Then a m/car, I did not see the number, came from Kluang with undipped lights. I was blinded and I sounded the horn 4 times. With no reason I (accidentally) knocked against the cyclist and he was thrown into a ditch on the left-hand side of the road as one faces Kluang. He was unable to talk. I did not carry or send (him) to Hospital."

The witness Paiman said that at about 5.30 a.m. on 4th February, 1960, he and the deceased were cycling along the Ayer Hitam/Kluang Road on their way to work. The deceased was riding in front. The witness heard a car coming from behind which passed him at about 40 miles an hour and was travelling in a zigzag fashion. He then heard a noise of something like a tin dropping and then he saw that the deceased had been knocked down by the car.

In cross-examination he had to admit that previously he had given evidence at the Magistrate's Court, Kluang, in criminal proceedings arising out of the incident and admitted that he had told the Magistrate he had not seen the accident.

After evidence by a clerk in the Registry of Motor Vehicles, Singapore, that on 4th February, 1960, the car No. SC. 7044 was registered in the name of the first defendant and evidence by the widow to the effect that her husband was dead but which otherwise only related to the question of *quantum* of damages, counsel for the defendants made a submission of which the following is the Judge's note:—

"I am asking Court to say that the plaintiff has failed to discharge his burden. Paiman did not see the accident. No evidence to show how accident happened."

After that submission by counsel for the defendants the trial Judge gave a short judgment holding that there was no case to answer by the defendants and dismissing the claim with costs. In grounds of judgment, which he delivered subsequently, he said he was satisfied that the witness Paiman did not see the accident and that although the second defendant, the driver of the car, had made a report admitting that his car knocked down the deceased he also said that he was blinded by the undipped lights of an oncoming car.

The unsuccessful plaintiff has now appealed.

Needless to say I accept without hesitation the view of the learned trial Judge as to the credibility of the witness Paiman. He had told two different stories, one in the Magistrate's Court and one at the trial of the present action, and clearly he was not a witness whose evidence could be relied upon. In my view, however, the trial Judge paid insufficient attention to the contents of the admission made by the second defendant to Corporal Sarman. In it he admitted that he was driving the car and that he knocked down the deceased, though he claimed, by way of excuse, that he was blinded by the undipped lights of an oncoming car. But he admitted more than that. He admitted that before he was blinded he saw the cyclist in front of him. The position, therefore, was that if while he was aware of the presence of the cyclist between himself and the oncoming car he was deprived of his vision by the lights of the oncoming car to such an extent that he lost sight of the cyclist it was his duty to stop and not to proceed until he had ascertained the cyclist's whereabouts. The fact that he sounded his horn, and sounded it four times, shows that he had in mind the presence of the cyclist but in the circumstances just sounding his horn and yet proceeding on his way was not enough. It was his duty to come to a standstill and refrain from proceeding until he knew where exactly the cyclist was and that it was safe to proceed.

It was said by Lord Greene, M.R., in the case of *Laurie* v. *Raglan Building Co. Ltd*:—[1]

"If roads are in such a condition that a motor car cannot safely proceed at all, it is the duty of the driver to stop."

Mutatis mutandis that passage applies to the present case. Having regard to the presence of this cyclist in front of him it was the duty of the second defendant to stop until he knew he could safely proceed. And he did not stop and while his vehicle was still in motion it collided with the cyclist. It was not simply a case of driving at such a speed that he could not pull up within the sphere of his vision (see *Morris* v. *Luton Corporation*[2]). It was a case where

it was not safe to drive at any speed at all unless and until the driver was aware of the exact position of the cyclist of whose presence in the immediate vicinity he was aware. On that, in my view, there is a clear *prima facie* case of negligence.

Having come to that conclusion the question then arises what this Court should do in view of the course taken at the trial by counsel for the defendants when he submitted that there was no case to answer.

It is a great pity that when this submission was made the advice of Goddard, L.J., (as he then was) in the case of *Parry* v. *Aluminium Corporation, Ltd.*[3] was disregarded. His Lordship there observed that in cases of negligence if a Judge is asked to rule at the end of the plaintiff's case that the plaintiff had made out no case it is most desirable that he should put counsel for the defence to his election as to whether he wishes to call evidence for the defence and should refuse to give a ruling unless counsel elects to call no evidence. That statement as to the practice which should be followed in such circumstances has been approved again and again (*Laurie* v. *Raglan Building Co. Ltd., supra; Yuill* v. *Yuill*[4]; *Storey* v. *Storey*[5]).

In the present case it is unfortunate that counsel who made the submission of no case to answer neglected to refresh the Judge's memory on this point. It is equally unfortunate, and even more surprising, that counsel for the plaintiff should also have failed in this regard. In the circumstances I think we have no option so far as the second defendant is concerned but to order a new trial. In my view, for which I have stated my reasons, the submission of no case to answer should have failed and the position would then have had to be considered in the light of the following passage from the judgment of Lord Greene M.R. in the case of *Yuill* v. *Yuill, supra,* (at p. 18):—

> "The practice which has been laid down amounts to no more than a direction to the judge to put counsel who desires to make a submission of no case to his election, and to refuse to rule unless counsel elects to call no evidence. Where counsel has so elected he is, of course, bound: but if for any reason, be it through oversight or (as here) through a misapprehension as to the nature of counsel's argument, the judge does not put counsel to his election, and no election in fact takes place, counsel is entitled to call his evidence just as if he had never made the submission."

I would, then, set aside the judgment of the Court below so far as concerns the second defendant and would order a new trial. As regards the first defendant I would dismiss the appeal because the admission of the second defendant was not admissible as against him (see *Burr* v. *Ware Rural District Council*[6]).

I think the proper order as to costs is that the costs of the appeal and the costs of the first trial should follow the event of the second trial. I say so because I think counsel on both sides were at fault at the trial for not giving the trial Judge the assistance he was entitled to expect. The first defendant should have by way of costs such amount (but only such amount) as the total costs have been increased by his being joined as a party, such amount not to include any apportionment of the general costs of the action or of the appeal.

Hill J.A.: I have had the advantage of reading the judgment of the learned Chief Justice, with which I agree and have nothing to add.

Barakbah J.A.: I have had the advantage of reading the judgment of the learned Chief Justice, with which I agree and have nothing to add.

Order accordingly.

Solicitors:—*Chong Thutt Pitt & Co.; Rodyk & Davidson.*

SHERIFFA SHAIKHAH v. BAN HOE SENG & CO. LTD.

[O.C.J. (Ambrose J.) May 23, 1963]

[Singapore — Suit No. 624 of 1961]

Power of Attorney—Forging of by agent—Execution of mortgage deed by person acting under forged power of attorney—Agent having no express or ostensible authority—Whether principal bound by act of agent.

Deed—Deposit of title deeds by principal with agent —Agent mortgaging property using forged power of attorney—Whether principal bound by act of agent—Whether principal represented agent to have authority—Whether mortgagee relied on actual authority or on ostensible authority of agent—Whether power of attorney and mortgage deed were nullities.

Principal and Agent—Forgery of agent—Execution of deed by fraudulent agent—Subsequent conviction of agent—Whether principal bound by acts of agent—Whether agent acted under actual or ostensible authority.

In 1952 the plaintiff purchased 4 houses and deposited the title deeds with a firm of commission and real estate agents for safe custody and appointed the firm to be her agents to collect rents, to pay rates and assessments and to attend to repairs. The partners of the firm were the plaintiff's husband and one S.A. In May 1960 S.A. had a power of attorney prepared in his favour and had it executed by a woman who was not the plaintiff. This power of attorney which purported to be executed by the plaintiff was registered on May 17, 1960: and on May 20, 1960 S.A. purporting to act under the registered power of attorney executed a mortgage deed in favour of the defendants who had no knowledge that the power of attorney and the mortgage were forged and took the mortgage in good faith. The said S.A. was subsequently convicted of dishonestly using as genuine a forged document.